IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
Central Division

SMITHFIELD FOODS, INC., MURPHY FARMS, LLC, and PRESTAGE-STOECKER FARMS, INC.,	)	
Plaintiffs,	)	Civil Action No. 4:02-CV-90324
v.	)	ORAL ARGUMENT REQUESTED
THOMAS J. MILLER, Attorney General of the State of Iowa in his Official Capacity,	)	
Defendant.	)	

PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT ON COUNTS I & III OF THEIR COMPLAINT FOR DECLARATORY AND PROSPECTIVE INJUNCTIVE RELIEF PURSUANT TO 42 U.S.C. § 1983

COMES NOW plaintiffs Smithfield Foods, Inc., Murphy Farms, LLC, and Prestage-Stoecker Farms, Inc., and in support of their Motion For Summary Judgment On Counts I & III of Their Complaint For Declaratory And Prospective Injunctive Relief Pursuant To 42 U.S.C. § 1983, file the following Memorandum of Authorities with this Court.

BACKGROUND

In April 2002, the Governor of Iowa signed protectionist legislation passed by the Iowa General Assembly that retroactively amended Iowa's anti-corporate farming law, Iowa Code § 9H.2, to ban Smithfield Foods, Inc. ("Smithfield"), Murphy Farms, LLC ("Murphy Farms"), and Prestage-Stoecker Farms, Inc. ("Prestage-Stoecker") from being able to conduct business in Iowa effective July 1, 2004.

This action came approximately two months after an Iowa state court had held that Smithfield's, Murphy Farms', and Prestage-Stoecker's contractual relationship did not violate Iowa Code § 9H.2. The 2002 amendment of Iowa Code § 9H.2 marked the third consecutive session in which the Iowa legislature had acted to shield in-state agricultural interests from external competition by vertically integrated entities. The 2002 amendments openly target Smithfield's operations in Iowa for abolition, preventing it from vertically integrating in Iowa because it was already vertically integrated elsewhere, and from participating in the substantial share of the interstate and international pork markets made up from Iowa production.

In its present form, Iowa Code § 9H.2 prevents an out-of-state pork processor like Smithfield, and its Murphy Farms subsidiary, from directly or indirectly owning, operating, controlling, or financing swine operations in Iowa. The statute also prevents out-of-state processors from financing an entity like Prestage-Stoecker to contract for the care and feeding of swine in Iowa. This statute specifically targets Prestage-Stoecker by redefining the term "processor" to include an individual like William Prestage who resigned this year from Smithfield's Board of Directors. The statute is not so quixotic as to seek to prohibit all vertical integration. Instead, Iowa Code § 9H.2 expressly exempts Iowa cooperative associations from this statutory ban on vertical integration and allows out-of-state cooperative associations to vertically integrate, but only if they have at least one Iowa cooperative association in their ownership and contract with at least one member of that Iowa entity who actively engages in farming.

The facial provisions, avowed purpose, and practical effect of Iowa Code § 9H.2 is to further the State of Iowa's official policy to ensure that Iowans retain the majority of wealth

created by agricultural productivity in their state, and that only Iowans can practice vertical integration in Iowa. Because Iowa Code § 9H.2 directly burdens established channels of interstate commerce and discriminatorily exploits the economic advantages of vertical integration to benefit Iowans at the expense of out-of-state corporations, this statute is *per se* invalid under controlling case law and violative of the dormant Commerce Clause of the federal constitution.

Iowa Code § 9H.2 additionally violates the dormant Commerce Clause because it regulates plaintiffs' out-of-state business operations according to in-state terms, barring plaintiffs from contracting to do business in Iowa because they are vertically integrated elsewhere in the world and process non-Iowa hogs outside of the State of Iowa.

Because there is no genuine issue of material fact in dispute regarding Iowa Code § 9H.2's unconstitutional intrusion upon interstate commerce, this Court should grant plaintiffs' motion for summary judgment and enter final judgment as a matter of law in their favor on Count I (Discrimination) and Count III (Extraterritorial Regulation) of their Complaint for Declaratory and Prospective Injunctive Relief Pursuant to 42 U.S.C. § 1983.

STANDARD FOR GRANTING SUMMARY JUDGMENT

Summary judgment is appropriate whenever "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247 (1986); Naucke v. City of Park Hills, 284 F.3d 923, 927 (8th Cir. 2002). *See* Celotex Corp. v.

Catrett, 477 U.S. 317, 323-24 (1986) (noting that "[o]ne of the principal purposes of the summary judgment rule is to isolate and dispose of factually unsupported . . . defenses").

"Parties to a motion for summary judgment cannot create sham issues of fact in an effort to defeat summary judgment." American Airlines, Inc. v. KLM Royal Dutch Airlines, Inc., 114 F.3d 108, 111 (8th Cir. 1997). Similarly, when litigants "simply hold differing views regarding the purpose and effect of the statute at issue," a federal district court should grant a motion for summary judgment. Gulch Gaming, Inc. v. State, 781 F. Supp. 621, 624 (D.S.D. 1991) (striking down a state statute requiring corporations applying for gaming licenses to be majority-owned by South Dakota residents as directly discriminating against interstate commerce in violation of the dormant Commerce Clause).

Whenever the evidence "'is so one-sided that one party must prevail as a matter of law,'" Thompson v. Hubbard, 257 F.3d 896, 898 (8th Cir. 2001) (quoting Anderson, 477 U.S. at 252), or "'if, under the governing law, there can be but one reasonable conclusion as to the'" outcome, a motion for summary judgment is due to be granted. Chicago Title Ins. Co. v. Resolution Trust Corp., 53 F.3d 899, 904 (8th Cir. 1995).

ARGUMENT

This Court should grant plaintiffs' Motion for Partial Summary Judgment because Iowa Code § 9H.2 codifies protectionist trade policies that directly burden interstate commerce and discriminate against out-of-state interests on their face, in their purpose, and in their effect, and extraterritorially regulate plaintiffs' out-of-state business according to in-state terms, all in violation of the dormant Commerce Clause.

It is hornbook law that the Commerce Clause, U.S. Const. art. I, § 8, cl. 3., not only gives Congress a "plenary and supreme" power to regulate trade in interstate markets, Prudential Ins. Co. v. Benjamin, 328 U.S. 408, 423 (1946) (citation omitted); *see also* Ben Oehrleins and Sons

and Daughter, Inc. v. Hennepin County, 115 F.3d 1372, 1382 (8th Cir.), *cert. denied*, 522 U.S. 1029, 1036 (1997) (noting that the Commerce Clause was designed *inter alia* "to allow markets to flourish across state borders"), but also prevents the States in the absence of Congressional legislation from enacting discriminatory and protectionist policies that seek to "convey advantages on local merchants" or "give local consumers an advantage over consumers in other States." Brown-Forman Distillers Corp. v. New York State Liquor Auth., 476 U.S. 573, 580 (1986) (citations omitted). *See also* Independent Community Bankers Ass'n of S.D., Inc. v. Board of Governors of the Federal Reserve Sys., 838 F.2d 969, 976 (8th Cir. 1988) (citation omitted).

Under this framework, the dormant Commerce Clause encourages "every farmer and every craftsman . . . to produce by the certainty that he will have free access to every market in the Nation, [and] that no home embargoes will withhold his export . . . . Likewise, every consumer may look to the free competition from every producing area in the Nation to protect him from exploitation from any." H.P. Hood & Sons, Inc. v. Du Mond, 336 U.S. 525, 539 (1949).

As a general rule, the dormant Commerce Clause is implicated whenever a state statute on its face, in its purpose, or in its effect, Bacchus Imports, Ltd. v. Dias, 468 U.S. 263, 270 (1984); SDDS, Inc. v. State, 47 F.3d 263, 267-72 (8th Cir. 1995), creates a "differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter." Oregon Waste Sys., Inc. v. Department of Envtl. Quality, 511 U.S. 93, 99 (1994). These anti-discriminatory concerns have increased over time as markets have expanded in scope and courts have recognized that "the right to engage in interstate commerce is not the gift of a state,

and that a state cannot regulate it or restrain it." H. P. Hood & Sons, 336 U.S. at 535. *See also* Marigold Foods, Inc. v. Redalen, 809 F. Supp. 714, 723-24 (D. Minn. 1992) (stating that constitutional principles like the dormant Commerce Clause were premised "'upon the theory that the peoples of the several states must sink or swim together, and that in the long run prosperity and salvation are in union and not division'") (citation omitted).

Accordingly, the dormant Commerce Clause prevents states like Iowa from adopting protectionist or discriminatory laws and trade policies that are intended to shield local businesses and industries from interstate competition. *See, e.g.*, Waste Sys. Corp. v. County of Martin, 985 F.2d 1381, 1388 (8th Cir. 1993) (striking ordinance that required compostable solid waste to be delivered to a new local facility rather than be sent out of state at a lower cost on the basis that "'[i]t has long been the law that States may not build up [their] domestic commerce by means of unequal and oppressive burdens upon the industry and business of other States'") (quoting Bacchus Imports, 468 U.S. at 272) (internal quotation marks omitted); South Dakota Farm Bureau, Inc. v. Hazeltine, 202 F. Supp. 2d 1020 (D.S.D. 2002), *appeal docketed*, No. 02-2366 (May 29, 2002) (striking down scheme remarkably similar to Iowa Code § 9H.2 that was "designed to prohibit large corporations, which already largely control the ultimate processing and distribution of agricultural commodities, from vertically integrating an industry to the competitive exclusion of the traditional family farmer") (quotation at 1049); Pete's Brewing Co. v. Whitehead, 19 F. Supp. 2d 1004, 1012 (W.D. Mo. 1998) (noting that a state beer labeling statute was unconstitutional because it gave exempted in-state brewers a competitive advantage while depriving "out-of-state producers and importers of certain marketing [and other economic] advantages they currently enjoy").

The dormant Commerce Clause further prevents states like Iowa from subsidizing local producers to arrest their economic decline. *See, e.g.*, Polar Ice Cream & Creamery Co. v. Andrews, 375 U.S. 361, 377 (1964) ("The exclusion of foreign milk from a major portion of the Florida market cannot be justified as an economic measure to protect the welfare of Florida dairy farmers or as a health measure . . . ."); Baldwin v. G. A. F. Seelig, Inc., 294 U.S. 511, 522 (1935) ("If New York, in order to promote the economic welfare of her farmers, may guard them against competition with the cheaper prices of Vermont, the door has been opened to rivalries and reprisals that were meant to be averted by subjecting commerce between the states to the power of the nation."); Shafer v. Farmers' Grain Co., 268 U.S. 189, 201 (1925) ("We think it plain that, in subjecting the buying for interstate shipment [of wheat] to the conditions and measure of control just shown, the act directly interferes with and burdens interstate commerce and is an attempt by the state to prescribe rules under which an important part of such commerce shall be conducted. This no state can do consistently with the [dormant] commerce clause."). The fact that a state possesses an "unquestioned power to protect the health and safety of its people" does not allow it to "plainly discriminate[] against interstate commerce" by "erecting an economic barrier protecting a major local industry against competition from without the State . . . ." Dean Milk Co. v. City of Madison, 340 U.S. 349, 354 (1951).

Unsurprisingly, the Supreme Court of the United States and the lower federal courts have consistently struck down attempts by states to elevate parochial over national concerns and to hoard commercial benefits or economic resources for their own citizens. *See, e.g.*, Foster-Fountain Packing Co. v. Haydel, 278 U.S. 1 (1928) (striking Louisiana statute declaring all shellfish to be the state's property and regulating their taking by private entities); Johnson v.

Haydel, 278 U.S. 16 (1928) (similar Louisiana law pertaining to oysters); Independent Community Bankers Ass'n, *supra* (statutory provision *inter alia* limiting an out-of-state bank holding company acquiring an in-state bank to one office in South Dakota); Gulch Gaming, *supra* (statute requiring gaming entities to be majority-owned by South Dakota residents); National Ass'n of Fundraising Ticket Mfrs. v. Humphrey, 753 F. Supp. 1465, 1470-73 (D. Minn. 1990) (statute requiring pull-tab game pieces sold in Minnesota to be manufactured in that state); Grandin Farmers' Co-op. Elevator Co. v. Langer, 5 F. Supp. 425 (D.N.D.) (three-judge panel), *aff'd*, 292 U.S. 605 (1934) (statute permitting the governor to declare an embargo on the export of grain from North Dakota).

Here, the discriminatory intent, purpose, and effect of Iowa Code § 9H.2 could not be plainer. Murphy Farms currently ships feeder pigs into Iowa for finishing. (Compl. ¶ 11; Pope Aff. ¶ 9; Prestage Aff. ¶ 4) (App. 5, 49, 51). The Iowa General Assembly expressly amended the anti-corporate farming statute during its 2000 and 2002 sessions in an effort to prevent Smithfield from vertically integrating in Iowa and availing itself of the various resources that have allowed Iowa to become the nation's largest hog producing state. (Compl. ¶¶ 20, 71-76, 94-105; Pope Aff. ¶ 12) (App. 7, 22, 26-32, 49). This inescapable conclusion is logically compelled by the facts and circumstances of this case. It is undisputed that the Iowa legislature retroactively amended Iowa Code § 9H.2 in 2000 to prevent vertically integrated out-of-state producers and in-state producers associating with them (*i.e.*, plaintiffs) from being able to vertically integrate their operations in Iowa. It is equally beyond cavil that far from making vertical integration illegal throughout the state, Iowa Code § 9H.2 allows entities organized under Iowa law or that contain an Iowa component to their membership to vertically integrate

their pork operations without any statutory constraint or penalty. The facial intent, avowed purpose, and practical effect of Iowa Code § 9H.2 is to ban plaintiffs from vertically integrating in Iowa.

Because "'[t]he clearest example of [protectionist] legislation is a law that overtly blocks the flow of interstate commerce at a state's borders,'" Middle S. Energy, Inc. v. Arkansas Pub. Serv. Comm'n, 772 F.2d 404, 418 (8th Cir. 1985), *cert. denied sub nom.* Ratepayers Fight Back v. Middle S. Energy, Inc., 474 U.S. 1102 (1986) (quoting City of Philadelphia v. New Jersey, 437 U.S. 617, 624 (1978)), Iowa Code § 9H.2 cannot withstand judicial scrutiny and is *per se* invalid under the dormant Commerce Clause. *See, e.g.*, County of Martin, 985 F.2d at 1385 (noting that "regulations that operate as economic protectionism and serve to protect in-state interests at the expense of out-of-state competitors are *per se* invalid") (citing *inter alia* City of Philadelphia, *supra*).

The United States Court of Appeals for the Eighth Circuit's reasoning in SDDS is dispositive of this case. There, South Dakota residents defeated a referendum that would have allowed a corporation to import out-of-state trash into the state for processing and storage. SDDS, 47 F.3d at 266. After protracted litigation, the Eighth Circuit was again asked to decide the constitutionality of the disputed referendum. *Id.* at 266-67. A panel of that court unanimously concluded that the referendum constituted "the latest in a series of protectionist roadblocks erected by [the State]" and that its discriminatory purpose and effect subjected it to "'the strictest scrutiny'" under the dormant Commerce Clause. *Id.* at 264-65, 268. When it reviewed the legislative history behind the referendum, the court of appeals held that it was "brimming with protectionist rhetoric" that was intended "to defeat a specific 'out-of-state dump

. . . .'" *Id.* at 268. Because the process leading up to the referendum was so "steeped in inflammatory propaganda," strict scrutiny was triggered and the State had the burden to show that the decision to ban trash imported from out-of-state was justified "'both in terms of the local benefits flowing from the [measure] and the unavailability of a nondiscriminatory alternative adequate to preserve the local interests at stake.'" *Id.* at 270-71 (quoting Hunt v. Washington State Apple Advertising Comm'n, 432 U.S. 333, 353 (1977)). Because the referendum served no local benefit that would justify its burden on interstate commerce, and because nondiscriminatory alternatives were apparent, the panel struck it as violative of the dormant Commerce Clause. *Id.* at 271-72.

Comparably in Hunt, the Supreme Court of the United States considered whether a North Carolina statute requiring out-of-state producers to use North Carolina grades for apples shipped to that state for sale violated the dormant Commerce Clause. 432 U.S. at 348-49. After carefully analyzing the statute, the Court held that it

> has the practical effect of not only burdening interstate sales of Washington apples, but also discriminating against them. This discrimination takes various forms. The first, and most obvious, is the statute's consequence of raising the costs of doing business in the North Carolina market for Washington apple growers and dealers, while leaving those of their North Carolina counterparts unaffected . . . . Obviously, the increased costs imposed by the statute would tend to shield the local apple industry from the competition of Washington apple growers and dealers who are already at a competitive disadvantage because of their great distance from the North Carolina market.
>
> Second, the statute has the effect of stripping away from the Washington apple industry the competitive and economic advantages it has earned for itself through its expensive inspection and grading system . . . .

> Third, by prohibiting Washington growers and dealers from marketing apples under their State's grades, this statute has a leveling effect which insidiously operates to the advantage of local apple producers . . . . [B]ecause of the statute's operation, Washington apples which would otherwise qualify for and be sold under the superior Washington grades will now have to be marketed under their inferior USDA counterparts. Such 'downgrading' offers the North Carolina apple industry the very sort of protection against competing out-of-state products that the Commerce Clause was designed to prohibit. At worst, it will have the effect of an embargo against those Washington apples in the superior grades as Washington dealers withhold them from the North Carolina market. At best, it will deprive Washington sellers of the market premium that such apples would otherwise command.

Id. at 350-52. Because this statute, which was purportedly intended to benefit consumers, did "little to protect [them] against the problems it was designed to eliminate," and because it appeared that "nondiscriminatory alternatives to the outright ban of Washington State grades [were] readily available," the Court affirmed its unconstitutionality. *Id.* at 353-54.

Under this well-settled framework, Iowa Code § 9H.2 can fare no better. Its intent, purpose, and effect is to ban plaintiffs from being able to vertically integrate in Iowa and to bar them from being able to avail themselves of the various resources that have allowed Iowa to become the nation's largest hog producing state, while expressly permitting Iowa-based farmers and cooperative associations to vertically integrate and benefit to plaintiffs' detriment from Iowa Code § 9H.2's statutory shield. The dormant Commerce Clause does not permit the State of Iowa to close its borders to plaintiffs, and thus deprive them of their federal right to engage in interstate commerce. *See, e.g.*, Asbill v. State, 209 U.S. 251, 256 (1908) ("The state may not . . . employ inspection laws to exclude from its borders the products or merchandise of other states."); Red River Serv. Corp. v. City of Minot, 146 F.3d 583, 589 (8th Cir. 1998) (noting that

if a measure "deprives competitors, whether in-state or out-of-state, of access to a local market, then [it] violates the Commerce Clause"); SDDS, 47 F.3d at 271 (noting that South Dakota by referendum could not unconstitutionally shift the market costs of trash disposal onto other states); Butler Bros. Shoe Co. v. United States Rubber Co., 156 F. 1, 14 (8th Cir. 1907), *cert. denied*, 212 U.S. 577 (1908) (noting that "there can be no doubt that no state in the Union retains the power to exclude a foreign corporation from, or to condition or burden its exercise of its constitutional right to carry on interstate commerce in recognized staple articles of commerce within the limits of the state"); Cloverland-Green Spring Dairies, Inc. v. Pennsylvania Milk Mktg. Bd., 298 F.3d 201 (3d Cir. 2002) (holding that Pennsylvania could not adopt price floors that deprived out-of-state milk producers their competitive economic advantage of being able to offer milk at lower wholesale prices); National Solid Waste Mgmt. Comm'n v. Williams, 877 F. Supp. 1367, 1376 (D. Minn. 1995) (noting that the "'preservation of local industry by protecting it from the rigors of interstate competition is the hallmark of the economic protectionism that the Commerce Clause prohibits'") (quoting West Lynn Creamery, Inc. v. Healy, 512 U.S. 186, 205 (1994)).

Under the dormant Commerce Clause, the State of Iowa may not demand that plaintiffs conform their out-of-state business operations according to in-state terms or restrictions. *See, e.g.*, Southern Pac. Co. v. State of Ariz. *ex rel.* Sullivan, 325 U.S. 761, 781 (1945) (noting that "when a state . . . 'attempts to impose particular standards as to structure, design, equipment, and operation . . . the state will encounter the principle that such requirements, if imposed at all, must be through the action of Congress which can establish a uniform rule'" in the interest of national concern) (quoting Kelly v. State of Wash. *ex rel.* Foss Co., 302 U.S. 1, 15 (1937)); American

Meat Inst. v. Barnett, 64 F. Supp. 2d 906, 918 (D.S.D. 1999) ("[T]he United States Court of Appeals for the Eighth Circuit teaches that the Dormant Commerce Clause invalidates state statutes which require people or businesses to conduct their out-of-state commerce in a certain way. If a state statute requires out-of-state commerce to be conducted according to in-state terms, then the statute burdens interstate commerce.") (internal citations omitted) (citation omitted). Because Iowa Code § 9H.2 dictates that plaintiffs cannot contract for the care and feeding of swine in Iowa if they process non-Iowa hogs outside of the State of Iowa, the unconstitutionality of this statute under established dormant Commerce Clause jurisprudence is not subject to reasonable dispute.

Of course, this is not the first time that a district court in this circuit has had to consider whether a state anti-corporate farming statute violates the dormant Commerce Clause of the federal constitution. In Hazeltine, the district court struck down an amendment to the anti-corporate farming provision in the South Dakota state constitution that "appear[ed] to be designed to prohibit large corporations . . . from vertically integrating an industry to the competitive exclusion of the [family] farmer." 202 F. Supp. 2d at 1049. Here, Iowa Code § 9H.2 impermissibly burdens interstate commerce; discriminates against out-of-state interests in its intent, purpose, and effect; and cannot survive strict scrutiny. This is demonstrated by the express language of Iowa Code § 9H.2, and by the protectionist motives (verified through objective sources) that led to its enactment, and is confirmed by the statutory exemptions that are expressly granted to, and reserved for, Iowa-based cooperative associations and entities with an active Iowa component to their membership. *See* Burlington N. R.R. Co. v. State of Neb., 802 F.2d 994, 1002 (8th Cir. 1986) (citing Kassel v. Consolidated Freightways Corp., 450 U.S. 662

(1981) (plurality op.) (noting that the State of Iowa could not "constitutionally promote its own parochial interests" and violate the dormant Commerce Clause by banning the use of out-of-state trucks longer than sixty feet on its highways) (quotation at 678)).

Under settled law, if some locals or local interests are discriminatorily preferred in interstate commerce over out-of-state entities, the fact that other local concerns are not so favored will not save a statute from being held unconstitutional in violation of the dormant Commerce Clause. Thus, Iowa Code § 9H.2, which openly discriminates in favor of Iowa-based cooperative associations and cooperative associations with an Iowa ownership component, violates the dormant Commerce Clause even though Iowa corporations are treated like the burdened out-of-state entities. *See, e.g.*, C & A Carbone, Inc. v. Town of Clarkstown, 511 U.S. 383, 391 (1994) (ordinance requiring waste disposal at particular transfer station held unconstitutional even though it also discriminated against some in-state processors); Ben Oehrleins, 115 F.3d at 1384 ("To the extent that [the ordinance] prohibits export of waste across state lines, it is irrelevant that [it] also restricts garbage movement within the state."); County of Martin, 985 F.2d at 1386; Waste Recycling, Inc. v. Southeast Ala. Solid Waste Disposal Auth., 814 F. Supp. 1566, 1578 (M.D. Ala. 1993), *aff'd without opinion*, 29 F.3d 641 (11th Cir. 1994) (citing *inter alia* Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dep't of Natural Resources, 504 U.S. 353, 362-63 (1992)).

CONCLUSION

Because the *per se* invalidity of Iowa Code § 9H.2 is apparent under controlling precedent, because there is no valid local benefit that could justify its intrusion upon interstate commerce, because defendant cannot plausibly assert that there were no other nondiscriminatory

alternatives available when Iowa Code § 9H.2 was enacted, and because Iowa Code § 9H.2 extraterritorially regulates out-of-state commerce by prohibiting entities processing non-Iowa hogs outside of the State of Iowa from operating in this state, this Court should grant plaintiffs' motion for summary judgment, enter final judgment in their favor on Count I and Count III of their Complaint, and award such other and further relief as the ends of justice may require.

REQUEST FOR ORAL ARGUMENT

Pursuant to the Local Rules of the United States District Court for the Northern and Southern Districts of Iowa, plaintiffs hereby request oral argument and assert that good cause exists for them to be heard by this Court due to the significant constitutional issues presented by the State of Iowa's discriminatory and unconstitutional intrusion upon established channels of interstate commerce.

Respectfully submitted,

Harold N. Schneebeck, PK0004883 – Lead Counsel
Steven C. Schoenebaum, PK0004898
Richard K. Updegraff, PK0005668
Brian P. Rickert, PK0016251
BROWN, WINICK, GRAVES, GROSS
BASKERVILLE & SCHOENEBAUM, P.L.C.
666 Grand Avenue, Suite 2000
Des Moines, Iowa 50309
Telephone: (515) 242-2400
Facsimile: (515) 283-0231
Email: hns@ialawyers.com
scs@ialawyers.com
rku@ialawyers.com
bpr@ialawyers.com

AND

Richard Cullen (V.S.B. No. 16765)
(admitted *pro hac vice*)
E. Duncan Getchell, Jr. (V.S.B. No. 14156)
(admitted *pro hac vice*)
J. William Boland (V.S.B. No. 23548)
(admitted *pro hac vice*)
Robert L. Hodges (V.S.B. No. 31396)
William H. Baxter II (V.S.B. No. 42587)
(admitted *pro hac vice*)
McGUIREWOODS LLP
One James Center
901 East Cary Street
Richmond, Virginia 23219-4030
Telephone: (804) 775-1000
Facsimile: (804) 698-2061
Email: rcullen@mcguirewoods.com
dgetchell@mcguirewoods.com
wboland@mcguirewoods.com
rhodges@mcguirewoods.com
wbaxter@mcguirewoods.com

AND

Warren E. Zirkle (V.S.B. No. 15321)
(admitted *pro hac vice*)
McGUIREWOODS LLP
1750 Tysons Boulevard, Suite 1800
McLean, Virginia 22102-4215
Telephone: (703) 712-5000
Facsimile: (703) 712-5262
Email: wzirkle@mcguirewoods.com

ATTORNEYS FOR PLAINTIFFS SMITHFIELD FOODS, INC. AND MURPHY FARMS, LLC

Robt Malloy by BPE

Robert P. Malloy, PK0003342
MALLOY LAW FIRM
Professional Services Building
P.O. Box 128
503 East Main Street
Goldfield, Iowa 50542
Telephone: (515) 825-8131
Facsimile: (515) 825-3898
Email: malloy@goldfieldaccess.net

ATTORNEY FOR PLAINTIFF PRESTAGE-STOECKER FARMS, INC.

Copy to:

Gordon E. Allen
Stephen H. Moline
Assistant Attorney General
Hoover State Office Building
Des Moines, Iowa 50319

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing instrument was served upon each of the attorneys of record of all parties to the above-entitled cause by enclosing the same in an envelope addressed to each such attorney at such attorney's address as disclosed by the pleadings of record herein on the 27th day of Sept., 2002.

By:
- ☐ U.S. Mail
- ☒ Hand Delivered
- ☐ Federal Express
- ☐ Facsimile
- ☐ Overnight Courier
- ☐ Other

Signature BPE